

SPECIAL
COLLECTIONS



DOUGLAS
LIBRARY

QUEEN'S UNIVERSITY
AT KINGSTON

KINGSTON ONTARIO CANADA

τ

L

q

A

ki

THE
POWER of PARLIAMENTS
CONSIDERED,

IN A
LETTER

TO
A MEMBER OF PARLIAMENT.

By HENRY MADDOCK, Jun. Esq.
OF THE HONOURABLE SOCIETY OF LINCOLN'S INN, LATE
OF ST. JOHN'S COLLEGE, CAMBRIDGE.

THE SECOND EDITION.

"The Power of Kings, Lords, and Commons, is not an Arbitrary
"Power. They are the Trustees, not the Owners, of the Estate.
"The Fee-Simple is in *Us*. They cannot *alienate*, they cannot
"waste."
JUNIUS.

LONDON :
Printed for J. DEBRETT, opposite Burlington House, Piccadilly,
By COOPER and WILSON, Wild Court, Lincoln's Inn Fields.

1799.

AC 911. 1799. M28

τ

L

q

A'

ki

23.6.20

1892

செவ்வாய் ௧௭

1

1

B

3030799

for elegance of composition, I must forewarn you in the Letter before you, to search for arguments rather than for ornaments : 'There are occasions (and this may be one) where Reasoning, like Beauty, is, " when unadorned, adorned the most." ' I purposely avoid considering whether a Union with Ireland is a sound and politic measure. Politicians the most accomplished, not only of the present times, but of those which are past, have embraced different opinions upon the subject. It requires, undoubtedly, strong faculties of Mind, much local knowledge, and no little experience of Men and of the turnings of Human Affairs, safely to decide upon its Merits.

I will not then for a moment stay to discuss the advantages or the disadvantages of a Union, but shall hasten to consider (what cannot be too solemnly or too suffi-

ciently considered) the *legality* of the proposed Union, if effected in the manner it has been attempted. I remember (not, indeed, without melancholy sensations) that prophecy of Montesquieu which relates to the Liberties of Englishmen. I remember him to have foretold, That the Constitution of England will perish whenever the Legislative Power becomes more corrupt than the Executive—" Il périra, lorsque la
 " puissance législative sera plus corrompue
 " que l'exécutrice."

This Prophecy, you perceive, is in substance the same with that remarkable apothegm of the Lord Treasurer Burleigh, " that England could never be ruined but
 " by a Parliament." And Bacon, I remember, has somewhere or other a reflexion of a similar import.—Some transactions that have lately occurred recalled the prediction of Montesquieu most strongly to my mind. Once, indeed, I could look

upon it undismayed, but now I tremble for fear of its accomplishment. The new doctrines respecting the Absolute Power of Parliament alarm and startle me. I had imagined we should long, very long, have kept this prophecy of Montesquieu's at defiance. I well knew that a degenerate Parliament might, during the space of time for which it was elected, unfeelingly and ungenerously, surrender the Liberties of its Constituents; but on the happening of such an event, I could not but imagine the People would at the next succeeding election regain their Liberties, by the choice of worthier and more patriotic Representatives. Thus I thought that the Legislative Power must not only be more corrupt than the Executive before we could lose our Liberties, but also before that event could arrive, the *People* themselves must have lost all spirit and have become as corrupt as their Representatives. Thus it was I thought

that even such Men as Burleigh, and Bacon and Montesquieu, had (and in their favourite science too) drawn an erroneous conclusion. I always fancied, such was the excellent texture of our Constitution; that the People never could become Slaves in any formal or legal way, (at least for any length of time) unless they were *willing* Slaves. Nothing, did I think, but a relish for Slavery, as exquisite as unaccountable, could induce them to continue Representatives in their Trust who had once betrayed them. At the next succeeding Election, after the smart and galling occasioned by former errors, it appeared more than probable they would indignantly abate the Nuisance. But these it would seem were mere Chimeras. The Power of Parliament is, it is contended, *without any one exception*, Absolute. The Elected may despise their Electors ! may destroy their rights ! nay, even annihilate themselves ?

“ *Libertas et anima nostra in dubio est.* ”

It is assumed by those who advocate the Union, That the Parliament of Ireland is competent to the transfer of its Authority. They assume, as an undeniable right, its competency to agree, that instead of the Parliament as it now exists, a few Commons and a few Peers shall in the British Parliament represent the Kingdom of Ireland. This is, in other words, asserting, that the Parliament of Ireland is, without any one exception, possessed of an Absolute Authority ; for if it can irrevocably reduce the future Representation of the Country to one third of its present Representation, and transfer this piece of a Parliament to the English Legislature, it must at present, upon the same principles, have power in a still greater degree to abridge the Representation, to reduce the Representatives to Five, instead of a Hundred, and even to transfer it thus mutilated to a French

Convention, instead of an English Parliament.

If the Irish Parliament is possessed of Absolute Power, such as this, it follows as of course, that the English Parliament is possessed of an Authority equally extensive ; for the Architecture of their Constitutions is the same. Thus we see the Rights of Englishmen, as well as of Irishmen, are equally involved in the proceedings that are taking place. Our Interests are, upon this occasion, indeed, linked and embodied together. Here we are already united.

That in uniting a part of Itself to an English Legislature, the Irish Parliament does that which is irrevocable at its *own will*, no reasonable man can possibly deny. Should the Union prove beyond all conjecture ruinous, the Irish have not of Themselves, any means left of unloosening

their Political Tye. The vast Majority of English Members would unavoidably preponderate in every decision of importance. From *Their* consent it is that every measure of Legislation must inevitably flow. The Irish Members put in the balance against them would fly in the Air. Irish Rhetoric may serve to exasperate, or to amuse, or sometimes, perhaps, to persuade; but by no exertion whatever could the Irish Senators *command* any measure. They could only be the instruments by which others would work. The Irish Members will not form a fifth part of the English Legislature: They will be lost as a River would be lost if poured into or united with the Ocean. But here it is exclaimed, “ Strange delusion ! which takes these
 “ things for granted, that are both im-
 “ probable in Theory and impracticable
 “ in fact. The supposition is utterly im-
 “ probable that a Union should ever take

“ place without such Preliminaries being
 “ settled as would prevent either of the
 “ contracting parties from having the
 “ Power to lay a greater burden of Taxes,
 “ or to put more restraints on trade, or to
 “ curtail any of the liberties of the other
 “ party, beyond what the articles of
 “ Union shall authorize. An Infraction
 “ of the Terms dissolves the Union *ipso*
 “ *facto*, and restores the injured Country
 “ to its former state of Independence.”*

That what this writer affirms is not entirely true, a little recollection will assure us. The terms of the Union with Scotland have occasionally been trespassed upon, as I could prove, without any of the consequences supposed by this writer. Besides too, if, in truth, the Power of Parliament be so absolute as is contended; if it really be Omnipotent, might it not blot out at once and for ever the very terms of the

* Union and Separation, p. 17.

Union ! If such a measure took place, would it not, under cover of a fiction (which needs no extension), be deemed to issue from the consent of both the Irish and the English ? It would be a remediless grievance, unless we listen to that most gloomy of all Doctrines, the doctrine of Resistance.

The Union, then, I imagine, would, it is clear, be no less a *despotic*, than an *irrevocable Act* on the part of the Irish Legislature. By no means could she dissolve her Political Partnership. Now I must assert, that the irrevocable agreement by which Ireland would knit herself to England is most unreasonable, most absurd, and highly unconstitutional. No writer of any weight or consequence sanctions such a proceeding—No Lawyer of any repute has, I will venture to say, tarnished his writings in the support of so dangerous a position.

Let us examine a little into the *Reason* of the thing. Can we for one moment conceive, that the Electors of the Irish Parliament imagined they were conferring on their Representatives a Power to abolish their Elective Rights, and to transfer all Legislative Power irrevocably and for ever? The good and great Lord Somers has laid it down as a maxim, that “No Man or Society of Men have power to deliver up their preservation, or the means of it, to the absolute will of any Man or Men.” *—In support of this opinion of

* Judgment of whole Kingdoms.—It has been doubted whether this publication was rightly attributed to Lord Somers. It seems to me at least as probable that it was his, as that it was not. It is not, however, very material to my argument who wrote it; except, indeed, that truisms themselves would in some measure appear (if possible) still truer when adopted by such a man as Lord Somers. From that diffidence which so usually accompanies superior merit, and is, perhaps, the least fallible sign of it, we have to regret that he chose to do “good by stealth,” and sent his Writings into the world without a name. With

my Lord Somers, I may quote that of Aristotle. On this occasion I am supported by this wonderful Ancient, this Political Champion, who has so lately been routed out of his dusty cobweb quarters, and arrayed anew, to come forth and combat the

what pleasure could I dwell on the precious memory of this virtuous and enlightened Statesman and Lawyer! It was after this finished model that Lord Hardwicke, avowedly, trained himself up to the excellence he exhibited. The early circumstances of their lives were the same; and nearly the same too was the success and glory which accompanied their honourable career: And here I am led to remark, that a late elevation in the Common Pleas does the highest honour to its advisers. The deservings of the person to whom I allude call for the *highest reward*—and the highest reward I hope they will receive. The happy influence of such men upon Society, not only to the age in which they live, but to ages which succeed, is incalculable. Most astonishing is the force of example! It is such as they who animate the drooping despondency of humble and lowly merit: It is they who invigorate the energies of the mind, and point the way where true honor and real glory may be found.

The reader will pardon the length of a note which has insensibly swelled beyond its intended limit.

pigmy innovators of the day ; even from him may we learn a lesson of another sort, and quite a different doctrine from that attempted to be imposed upon us. His Annotator observes, that,* “ In every
 “ community the Sovereignty, whether
 “ residing in one, the few, or the many,
 “ must necessarily be employed in deliber-
 “ ating concerning public measures ; in
 “ electing or appointing Magistrates, or
 “ in distributing justice, and deciding dif-
 “ ferences. But the work of Legislation,
 “ when once complete, ought never after-
 “ wards, according to our author (Aris-
 “ totle), to be touched but with a cau-
 “ tious and trembling hand ; and to say,
 “ that the actual Sovereign, whether King,
 “ Nobles, or Commons, or all three collec-
 “ tively, are invested with the plenitude of
 “ legislative authority, is, in his opinion, to
 “ grant to them a power they cannot ever

* Gillies' Translation of Aristotle's Politics.

“ rightfully exercise, unless it could be
 “ allowed that one generation of men
 “ might be fairly entitled to intercept from
 “ posterity the improvement made, and the
 “ light accumulated, in the long course
 “ of preceding ages.” The Annotator
 truly observes, “ To do this, is a stretch
 “ of Authority to which the most despotic
 “ Princes of Asia have never yet laid claim.
 “ In the absolute Monarchies of Europe,
 “ while unjust wars were undertaken, ex-
 “ orbitant taxes imposed, and temporary
 “ regulations respecting every public mea-
 “ sure capriciously made, and capriciously
 “ abolished, the fundamental Laws of their
 “ respective Kingdoms were acknowledged
 “ and respected by those branded as the
 “ wildest and most furious despots. In
 “ matters of Policy, that cannot be just or
 “ fit, which never can be useful; and our
 “ author (Aristotle) endeavours to prove,
 “ that it never can be useful for a nation

“ completely and suddenly to depart from
 “ its hereditary institutions: a departure
 “ which, destroying that principle on
 “ which the efficacy of all Laws is founded,
 “ would destroy Government itself; that
 “ illustrious work of Nature, which mere
 “ human powers, as they could not origin-
 “ ally establish it, cannot have a right to
 “ pursue those measures by which it is
 “ likely to be eventually overturned.”

Such is the opinion of Aristotle and his elegant and learned Annotator.

I am not, as you already see, and will
 have still greater occasion to conclude,
 sparing in my quotations. Where my own
 Ideas run in the wake of others, diffident
 of myself, and knowing full well that I
 can be no authority, I am happy as often as
 I can to shelter myself under the opinions
 of others. If I make good my argument,
 I shall be contented; nor shall I then care

if, amongst the great men I quote to you, I should appear like Gulliver amidst the Brobdingnags.

If we suppose that the Electors *can* for Themselves and their *Posterity* (generously) bestow an absolute Power over Themselves and their Posterity, would they intentionally commit so enormous a wrong in the voluntary, unhesitating, delegation of so preposterous an Authority? Did their Representatives at the time suppose such a Power had been transferred to them? Impossible! Only for a moment consider to what an extent this novel Principle might be spun. The Parliament of Ireland transfers all its Authority for ever to the British Parliament (for such I contend it would do); the British Parliament upon the same Principles might transfer their Authority for ever to the King, and thus convert our limited Government into an

Absolute Monarchy, alterable only by Revolution, and which Revolution, according to these Principles, would be illegal. The Road to Tyranny is thus made short, I will not say easy. Such considerations cannot but compel you to be serious. Adverse as you have always been to any thing like Tyranny, whether Antient or Modern, with what reluctance will you assent to Principles upon which it may so securely be established?—Improvident will you think your Ancestors in having finished their Political Mechanism, so replete with “nice dependencies,” balances, checks, and controls, without having provided against its own destruction. You may suppose them to have imagined, perhaps, that in Parliaments, as in Man, there would be found an instinctive ruling urgency to self-preservation. You may suppose, perhaps, that they thought it an unnecessary nicety to provide against so mon-

stirous and crooked an attempt, and for the same reason as Solon made no Laws against Parricide, because he supposed the thing impossible. But they should have remembered (what Machiavel but too truly says) and experience but too truly proves, that “Man is prone to corruption.” They should have foreseen what Pope has said or sung,

“Judges and *Senates* have been bought for gold.”

and that Public bodies, voting by Majorities, cannot be insured from that inglorious pliancy, so discoverable upon occasions, in individuals. But after all, upon examination, you will find, I trust, that our Ancestors made not our Constitution like a Clock, which might run down of itself: on the contrary, from a survey of their glorious work, you must and will conclude, I think, that to the Absolute Power of Parliament there is necessarily the fol-

lowing notable exception : IT CANNOT DO WHAT IT CANNOT UNDO ; it cannot give validity to an irrevocable Act. It has Absolute Authority for every purpose but irrevocably to destroy its Power : I speak here, of course, of its legal and defined, and not its moral competence. This important fundamental conclusion is, as it were, the Axis round which all my arguments revolve. In terms it is new, but in existence it is old. It emanates from the Natural Rights of Men, and from the nature of a Trust ; it springs too from the End and Object of our Laws and Constitution, which is, Security against wrong.

Mr. Locke, with that profoundness for which he is so famous, observes, “ *The legislative cannot transfer the power of making laws to any other hands : for it being but a delegated power from the people, they who have it cannot pass it over to*

others. The people alone can appoint the form of the Commonwealth, which is by constituting the legislative, and appointing in whose hands that shall be. And when the people have said, We will submit to rules, and be governed by laws made by such men, and in such forms, nobody else can say other men shall make laws for them ; nor can the people be bound by any laws, but such as are enacted by those whom they have chosen, and authorised to make laws for them. *The power of the Legislative, being derived from the people by a positive voluntary grant and institution, can be no other than what that positive grant conveyed, which being only to make LAWS and not to make LEGISLATORS, the legislative can have no power to transfer their authority of making laws, and place it in other hands.*" *

* Locke on Civil Government.

Mr. Locke's opinion deserves examining. By a transfer of the authority of making laws, He undoubtedly means an irrevocable transfer. To lend to another a concurrent *revocable* power of making laws would be perfectly Legal; because the next moment the new-erected Legislature, as well as its Laws, might be razed to the ground. That this is legal, every Corporation in this kingdom will serve us for proof. Corporations, to which a power of making Bye-Laws is concomitant, derive their authority either from Prescription, or from Parliament, or by Charter: but this delegated Power is held only by sufferance, and the Parliament might resume it if it chose. The Power granted by Charter to the East-India Company was, as you know, some time back resumed; and, notwithstanding the outcry of the moment, it was certainly *legally*

refumed. Parliament may *lend* its authority, but It cannot *transfer* it. This is but doing what could be undone, and would therefore be within the competence of Parliament. The act which gave to the Proclamations of Henry the Eighth the force of Statutes was, I apprehend, valid, since the very next day it might have been repealed. The Parliament only did that which was revocable. The “stupid or “wilful blindness” of the Parliament was not so great, perhaps, as Hume imagines. If it be said that Henry might by proclamation have annihilated Parliaments, permit me to deny the assertion—It could not annihilate Itself, and could not therefore transfer such a Power to Others—*Nemo dat qui non habet*—What shews its idea of the Authority Henry had gained, appears by a subsequent act confining the operation of the powers it had bestowed.

The distinction which Locke has taken between a Power of making *Laws* and a Power of making *Legislators*, appears to have struck the mind of Vattel. This Author observes,* “The Nation may entrust the exercise of Legislative Power to the Prince, or to an Assembly, or to that Assembly and the Prince jointly; who have then a right to make new Laws, and to repeal old ones. It is asked whether their Power extends to the fundamental Laws,—whether they may change the Constitution of the State? The principles we have laid down lead us to decide with certainty, that the authority of these legislators does not extend so far, and that they ought to consider the fundamental laws as sacred, *if the nation has not, in very express terms, given them power to change them.* For the Constitution of the State ought to possess stability: and since that was first

* Law of Nations.

established by the Nation, which afterwards entrusted certain persons with the Legislative Power, the fundamental laws are excepted from their commission. It is visible that the Society only intended to make provision for having the State constantly furnished with *laws suited to particular conjunctures*, and, for that purpose, gave the Legislature the power of abrogating the ancient civil and political laws that were not fundamental, and of making new ones: but nothing leads us to think that it meant to submit the Constitution itself to their will. In short, it is from the Constitution that those Legislators derive their power: how then can they change it, without destroying the foundation of their own authority?" When Vattel writes of fundamental Laws, it seems to me pretty obvious that he only means that Parliament cannot do what cannot be undone. This is, as I imagine, necessarily a fundamental Law,

and the only fundamental Law which is *unchangeable*. If any Laws are fundamental, Magna Charta, the Petition of Right, and the Habeas Corpus Act, are fundamental; and yet these have severally in their turns been wholly, or partially, altered, or, by a side wind, invaded. I think it necessary that Parliament should have a power over them—I think they *legally* have such a power. The only limitation to their power is, as it appears to me, that they shall not commit an act *felo de se*, and for ever resign their delegated Trust.—The opinion of Vattel is countenanced by Dr. Wooddeson, the late Vinerian Professor.* This learned writer having before treated somewhat of Legislative Power, observes, “Hitherto therefore we can discover no assignable bounds to legislative authority, considered ab-

* See the Preliminary part to his Lectures on the Laws of England.

stractedly from the mere moral right of its proceeding. The case is materially varied when we conceive Government acting on itself, or attempting to nullify its own essential Constitution. An occurrence, wearing in some degree a similar aspect, happened in this country when an act of Parliament (the *Lex Regia* of England) was passed to give the King's Proclamations, under some restrictions, the force of Statutes. If Legislators may transfer their authority, building up a novel Government on the abolition of their own, it is mere trifling to refer the original right of Legislation to national consent, explained, for the most part, by long acquiescence. The question is, whether any Legislature can essentially and avowedly demolish the Constitution? I speak not of doubtful innovations or abuses, where, perhaps, it might be reasonably objected, who is to judge of their progress or effect.

But I am considering Laws made and promulgated by a new Government, openly asserted, after its erection by the self-dissolved powers, and of institutes enacted under the colour of such change and preposterous assignment of dominion. If, indeed, the old style of authority be used, if constitutional power be surreptitiously or violently usurped, the Constitution may remain : so also the ends of all magistracy may be perverted : yet few, perhaps, will, in this respect, subscribe to Locke's opinion, that such instances invariably amount to a dissolution of the Government. To these cases, however, the reasoning is not directed. *But what can give a sanction to the total and undisguised alienation of Legislative Power, since this highest of functions is in the nature of a Trust ?*"

Dr. Wooddeson then quotes part of what I have already quoted from Vattel in confirmation of his Doctrine.

Wooddefon, you perceive, is most unequivocally against the pretended Power of the Irish Parliament. You perceive too, that a manly Friend to rational Liberty may be found even amongst the Tory Regions of Oxford. He considers, and justly too, that all Legislative Authority is but a Trust; and he seems unwilling that a deluded and disappointed throng of Electors should have reason to exclaim with Clinia in the Play — “ *O Jupiter ! ubinam est fides ?* ” — or with Virgil, “ *Quis custodiet ipsos custodes ?* ”

That a Power to make laws confers no Power of making Legislators, may very reasonably be inferred even from the writings of Sir Edward Coke and Sir Matthew Hale. You cannot but be surprised, as I was, at the following broad assertion of the Speaker in his Speech on the Union. “ In viewing the question of competency, it appeared to him that the

new doctrines of the present day were on the one side, and the sound principles, the theory, and the practice of the British Constitution, on the other. The highest legal Authorities affirmed the extent and supremacy of the Power of Parliament. It was sufficient to refer to the names of Sir Edward Coke, Sir Matthew Hale, and Sir William Blackstone, and many others, who, to say the least, have never been charged with a bias against the Constitution and Liberties of their Country. Here might I use the words of St. Austin, “*Quomodo legis? ubi scriptum est?*”—Every assertion in the passage I have quoted to you appears to me unauthorized and false. To this part of the speech I may apply the observation of Tacitus upon the first speech of Tiberius, “*Plus in oratione tali dignitatis quam fidei erat.*” I have been somewhat familiar with the writers alluded to; and I believe I might safely assert,

without a fear of contradictory evidence, that there is not one passage to be found in their works which warrants the conclusion drawn by the Speaker. So far from true is that conclusion, that I believe those authors on consideration will soon be found to establish quite a contrary and opposite position. In the observations I have just given you, I hope you will not be tempted to believe that I am wanting in proper respect for the highly honourable person to whom I allude. I am happily far enough removed from such a temper of mind, although I cannot always help expressing strongly that which I feel warmly.

Sir Edward Coke, speaking of Parliament, observes, “ The Jurisdiction of this Court
 “ is so transcendant, that it maketh, en-
 “ largeth, diminisheth, abrogateth, repeal-
 “ eth, and reviveth, *laws*, statutes, acts,
 “ and ordinances, concerning matters ec-

“ clerical, capital, criminal, common,
 “ civil, martial, maritime, and the rest.”*

Coke apparently confines the power of Parliament, as Locke, Vattel, and Wooddeson do, to making *laws*. Can, then, an act, destroying the Legislature, be denominated a *law*! Should the Union take place, no Act of Parliament would be necessary; an Agreement or Articles would be made to answer the end. Could you call such an Agreement or Articles a *Law*? It has not the usual concomitants of a Law. Laws are such acts as can be “ enlarged, diminished, abrogated, repealed;” but can we call those Acts, or that Agreement, or the Articles, by which a Parliament pretends to destroy itself, a Law! It is incapable of being enlarged, diminished, abrogated, or repealed, since no Power would remain to effect these ends.

* I. Institute, 110.

If a Parliament was only intended to make Laws, and not Legislators, as appears to be the fact, its Power, in this respect, not a little resembles that of the Decemviri, who, History informs us, were expressly and avowedly constituted for that purpose. These Decemviri, most undoubtedly, abused their Trust when they established Arbitrary Power. The establishment of Arbitrary Power was not included in the Commission enabling them to make *Laws*. It was alien to their Institution, unjustifiable and unwarrantable.

Sir Matthew Hale observes, “The Kings
 “ of this Realm, with the advice and con-
 “ sent of both Houses of Parliament, have
 “ power to make new Laws, or to alter,
 “ repeal, or enforce the Old. And this,
 “ says he, has been done in all succession
 “ of ages.”*—This latter sentence is ex-

* Hale's Common Law.

planatory of the nature, sort, and kind of laws he was writing of. Has the Parliament been accustomed to destroy itself? Do we find examples of this kind “in all successions of ages?” Certainly not. On the contrary, it never was attempted in England. Hale never supposed that the Parliament’s competence to make Laws would be construed into a competence to destroy itself. He never imagined it could do what it could not undo. He, who so proudly stood upon the rock of integrity, so amiably staunch as he was in what was right, would surely have revolted at the idea of its attempting an irrevocable Act. I cannot at this moment call to mind, in any period of our History, any one attempt by Parliament irrevocably to transfer its Power. Instead of destroying, it has invariably been increasing its Power. Its authority has uniformly been progres-

five, not retrograde ; beginning, indeed, at a small point, but, like an inverted pyramid, gradually enlarging.

The Heptarchy has been resorted to as proving the legality of the Union. But why travel so far back into History, and to so little purpose ? The Union of the Kingdoms of the Heptarchy was gradually accomplished by *Force*. It is preposterous, therefore, to urge this transaction as influencing the present question ; not to mention the absurdity of appealing to those unsettled ages for any pure or decisive notions of Parliamentary authority. *Abiit illud tempus : mutata ratio est*. Of the Parliaments of old, as Spelman rightly observes, “ They are, like the siege of Troy, “ matters only of story and discourse,” and not teachers of conduct.

Wales, too, was *subdued* into a Union,

and affords no argument bearing at all upon the present question.

Of the boasted precedent of the Union with Scotland, its partizans, perhaps, had (in prudence) better be silent. It may, however, be observed, that the Scottish Constitution was far from wholly resembling that of the Irish or the British. Their Government was but an Aristocracy, with a spice of Monarchy. We cannot consistently make the Scottish proceedings any guide for an Irish Parliament. Before we do so, we should be convinced that their Constitution, in its bearings and its tendencies, was the same, which, most assuredly, it was not.

The writings of Blackstone have been resorted to as conclusive in favour of the Competency of the Irish Parliament. We cannot, I confess, too highly appreciate

the value of these writings which this rival of Justinian has left as a Legacy to Posterity. But Sir William, you must remember, has already proved himself not infallible in Constitutional Doctrine. Upon Mr. Wilkes's expulsion, he was compelled to qualify some general maxims, established by his Commentaries. For my own part, I look in vain into Blackstone for any sanction of the Principles contended for : But it is said, you know,

“ Some see where other men are blind,
 “ As Pigs are said to see the wind.”

Let us see what it is that Blackstone has asserted : * “ The power and Jurisdiction of Parliament, says he (after Sir Edward Coke) is so transcendant and absolute that it cannot be confined, either by causes or persons, within any Bounds.” And of this Court, it may be truly said, “ Si antiqui-

* Blackstone's Commentaries.

“ tatem spectes, est vetustissima ; si digni-
 “ tatem, est honoratissima ; si jurisdic-
 tionem, est capacissima.” Here, let me ask
 You, if the Legislative Authority had been
 capable of irrevocable alienation, is it very
 probable an opportunity would have been
 given to Sir Edward Coke for this his Pa-
 negyric ? Little should we probably have
 known of its Ancestry—little of its Digi-
 nity, and less of its Authority. Its Anti-
 quity is no small proof it never was sup-
 posed capable of destruction. Blackstone
 farther observes, speaking of Parliament,
 “ It hath sovereign and uncontrollable
 “ authority in the making, confirming,
 “ enlarging, restraining, abrogating, re-
 “ pealing, reviving, and expounding of
 “ Laws concerning matters of all possible
 “ denominations, ecclesiastical or tempo-
 “ ral, civil, military, maritime, or crimi-
 “ nal—this being the place where that
 “ absolute despotic Power, which must in

“ all Governments reside somewhere, is
 “ intrusted, by the Constitution of these
 “ Kingdoms.” Respecting this absolute
 despotic Power, Sidney, in his Treatise on
 Government, observes, “ That the differ-
 ence between good and ill Government is
 not that those of one sort have an arbitrary
 power which the others have not, for they
 all have it; but that those, which are well
 constituted, place this power, so as it may
 be beneficial to the people.” Blackstone
 observes, that “ *this Arbitrary Power is*
entrusted by the Constitution of these Kingdoms
to Parliament,” which is the place unques-
 tionably where it may be most beneficial
 to the people. How then can Parliament
 transfer this arbitrary Power without act-
 ing in express contradiction to that Consti-
 tution which placed it in their hands in
 preference to those of any other? Is it not
 violating the very end for which they were
 constituted? The Constitution says, this

Arbitrary Power shall remain in the Parliament—the Parliament was designed as a constant standing reservoir of Arbitrary Power ; what Authority then can the Parliament possibly have to seat it elsewhere ?

Blackstone farther says, “ All mischiefs and grievances, operations and remedies, that transcend the ordinary course of the laws, are within the reach of this extraordinary tribunal. It can regulate or remodel the succession to the Crown ; as was done in the reign of Henry the Eighth and William the Third. It can alter the established religion of the land, as was done in a variety of instances in the reigns of King Henry the Eighth and his three children. It can change and create afresh even the Constitution of the Kingdom, and of Parliaments themselves ; as was done by the Act of Union, and the several Statutes for Triennial and Septennial Elections. It

can, in short, do every thing that is not naturally impossible; and therefore some have not scrupled to call its power by a figure, rather too bold, the omnipotence of Parliament. True it is, that what the Parliament doth no Authority can undo. I allow it to be true, that the Crown, as well as the National Religion, may be settled, as they have been settled, at the will of Parliament. In so settling them, they do no irrevocable act. They or their successors, or their posterity, may undo what has been done: their children's teeth will not necessarily "be set an edge with the four grapes they have eaten." The shortness of human foresight is thus, as it ought to be, capable of being supplied.

As to the power of changing the Constitution of the Kingdom, and of Parliaments themselves, we must depend upon this general assertion, only as it is illus-

trated by the instances adduced in support of it. That it may add to the number of its Members, as at the Union with Scotland, there is no doubt; for the moment the Scotch Member had taken his seat, by the same Authority which brought him there, he might have been ordered back again beyond the Tweed. The act for Septennial Elections was a vast stretch of authority; but the Parliament was, I humbly conceive, competent to the measure; for the very next day it might have repealed the act. The act which passed in the reign of the unfortunate Charles the First, taking away the Bishops' votes (exceedingly impolitic, as doubtless it was), was still, I imagine, unobjectionably legal. It was legal, notwithstanding the truth asserted by King Charles in answer to the first Petition on the subject; which answer, according to my Lord Clarendon, was in these words: "That for the depriving the Bishops of

their votes in Parliament, they should consider that their Right was grounded upon the *fundamental Law of the Kingdom and Constitution of Parliament.*” Notwithstanding this grand objection, this act was, I imagine, legal; because the Parliament could undo, as happily it has undone, what had been so unwisely and so fanatically done. Upon the same principle, too, the New Shoreham Disfranchisement Bill, in 1771, was perfectly legal. So when the Representation of the Principality of Wales, or of the Counties Palatine, was created, it was legally created, because this was a revocable act. To repeat again from Blackstone, “*True it is, what “the Parliament doth, no Authority upon Earth “can undo.*” But if the Irish Legislature were competent irrevocably to transfer its Authority to the English Parliament, as it will do in the event of a Union, there will then be an Authority which can undo

what They have done. For the English Legislature undoubtedly could exclude them from the English Parliament, and disunite the two Kingdoms again if they thought proper.

Puffendorf observes,* “ A Power being Supreme, or not acknowledging any superior upon Earth, the Acts which proceed from it cannot be disannulled at the pleasure of any other mortal. But (says he) that a person or state should be able to alter the Decrees and Resolutions of their own will, is so far from abridging, that it really enhanceth Liberty.” The Parliament of Ireland, you perceive, would, in the event of a Union, be in a situation exactly the reverse to that mentioned by Puffendorf. *Their Acts might be disannulled by Others, and yet not by Themselves.* They would be shut out from the means of changing their

* Law of Nature and Nations.

own Decrees, which, Puffendorf so well observes, “enhanceth their Liberty.”

I really believe that neither Sir Edward Coke, nor Sir Matthew Hale, nor Sir William Blackstone, had ever supposed the occurrence of the present great Constitutional Question ; nor have they, certainly, in any express terms, left its solution behind them. But if from what they have written any Opinion at all is to be inferred, it is most evidently *against* and not in favour of the pretended power of the Irish Parliament. Blackstone (as I hope to have shewn) has, in those very passages referred to in support of this Power, very clearly evinced its illegality.

Before I conclude, permit me to quote to you a passage from my Lord Bolingbroke, not a little confirmatory of the opinions I have advanced. His Lordship was not, I

own, a man fashioned after my notions of excellence. I read with indignation, as you must do (yet not without surprise and pity), his revoltings against Christianity. To his Political Disquisitions, however, the science in which he certainly the most excelled, I usually bow with reverence. Sometimes, perhaps, he writes as if he knew not what public business was, as sometimes he acted as if reflection had never fallen to his lot. But, generally speaking, his notions of Politics are, as I think, not only generous and noble, but instructive and deep, and solid, and certainly infinitely engaging, from the beautiful die in which they are cast. Should they occasionally lead us into error, it is sure to be an error of a noble kind, and what Horace would call "*gratissimus error*." This noble writer observes, "the collective
 " body of the People of Great Britain
 " delegate, but do not give up, trust, but

“ do not alienate their right and their
 “ power, and cannot be undone by having
 “ beggary or slavery brought upon them,
 “ unless they co-operate to their own un-
 “ doing, and, in one word, betray them-
 “ selves. We cannot, therefore, subscribe
 “ to those two sayings of my Lord Bacon,
 “ which are quoted to this effect; that
 “ England can never be undone unless by
 “ Parliaments, and that there is nothing
 “ which a Parliament cannot do. *Great*
 “ *Britain, according to our present Constitu-*
 “ *tion, cannot be undone even by Parlia-*
 “ *ments; for there is something which a*
 “ *Parliament cannot do.* A Parliament
 “ cannot annul the Constitution; and
 “ whilst that is preserved, though our
 “ condition may be bad, it cannot be irre-
 “ trievably so. The Legislative is a su-
 “ preme, and may be called, in one sense,
 “ an absolute, but in none an arbitrary
 “ power. ‘It is limited to the public good

‘ of the society. It is a power that hath no
 ‘ other end but preservation, and there-
 ‘ fore can never have a right to de-
 ‘ stroy, enslave, or designedly to impo-
 ‘ verish the subjects; for the obligations
 ‘ of the Law of Nature cease not in so-
 ‘ ciety,’ &c. If you therefore put so ex-
 “ travagant a case as to suppose the two
 “ Houses of Parliament concurring to
 “ make a formal cession of their own rights
 “ and privileges, and of those of the
 “ whole Nation to the Crown, and ask
 “ who hath the right and the means to
 “ resist the Supreme Legislative Power;
 “ I answer, the whole Nation hath a
 “ right; and a People, who deserve to
 “ enjoy liberty, will find the means,” &c.
 &c.—Lord Bolingbroke, you see, is most
 clear and decisive on the subject; and we
 cannot but admire that kind of political
 second sight with which he was so amply
 favoured. I do not quote to you the

opinion of others, as I might do, since I must certainly by this time have either tired or convinced you.

Thus it is, you observe, that Lawyers and Legislators limit the Power of Parliament, or, as Lord Clarendon calls it, the “Sovereign Physician.” Thus it is, that they seem all of them to agree with Publius the mimick,

“Malum consilium est quod mutari non potest.”

I should really have been ashamed to trouble you so much at length, and, as I fear, so drily and so unentertainingly, were it not upon a Subject of such vast constitutional import. Cicero, you know, says, *non erubescit Epistola*—a thought, by the bye, which your favourite, Pope, did not disdain to steal. If I have any way punished you, it was, at least, a punishment of your own

inviting. I own I was most solicitously anxious to rescue the Writings of some of our greatest Lawyers from those perversions, to which Men of the first Importance, as well as Talent (*lumen et ornamentum reipublicæ*), have on the present occasion so unaccountably subjected them.

The Laws of all our possessions are those undoubtedly which are the most valuable. Any alterations in these we should never think of but with fear and trembling. As they have long been my prominent pursuit, as well as a favourite study, so too they are the objects of my highest admiration. With them the old and vulgar adage, that “familiarity breeds contempt,” is so far from being applicable, that the very contrary is in reality the truth. But, of all Laws, Constitutional Law is that in which we are concerned the most, and should the most dearly prize.

Innovation here is the worst of Innovations ; when this wonderful and ingenious barrier against the inroads of tyranny and misrule is even so much as threatened, it becomes even the lowest of us, according to the means with which we are gifted, to struggle in their defence. A Constitution made *by*, and *for* the People, is of no ordinary value. The stream of power, we should always remember, is seldom stationary. If there be any bias in our Constitution, I am inclined to think it is in favour of the Executive Power. This way the stream runs, both stronger and longer, than it does the other. The legal and ascertained powers of the Crown are, indeed, as essential to the happiness of the People, as they are to the majesty, the ease, and comfort of the Monarch ; but should we not rather wish to see the democratic part of our Constitution increasing in strength, than see the Crown accumu-

lating any fresh stores of Authority, since we know that the people but too often sleep on their posts, and are assailable after a thousand ways, while the Executive Authority is always wakeful, and always ready, as well as willing, to snatch additional strength. Since I have thus travelled somewhat out of the way from my main design, allow me to proceed yet a little farther. It is the measure against which I have levelled my argument, that has awaked in me these reflections. I say, then, if it be true, that when a Government is about to be formed, in order to provide against knavery, it is proper that every man must be supposed a knave; so, too, in order to continue any good system of Government, it is equally necessary that the same suspicion of knavery prevail. Institutions must be watched, in order to be preserved. The political motto of our Constitution is "*Distrust.*" Excellently too is it framed

to bring offenders to light. And here I am reminded of a most eloquent and profound observation in the second Philippic of Demosthenes, “ Various” (says he) “ are
 “ the contrivances for the defence and security of cities : as battlements and
 “ walls and trenches, and every other kind
 “ of fortification ; all which are the effects of labour, and are attended with
 “ considerable expence. But there is one
 “ common bulwark with which men of
 “ prudence are naturally provided, the
 “ guard and security of all people, particularly of free States, against the assaults
 “ of Tyrants. What is this—*Distrust*—
 “ of this be mindful : to this adhere : preserve this carefully, and no calamity can
 “ affect you.” The philosophy of this passage applies as well to *domestic* as to *foreign* invaders : and is it not truly noble ?
semper in ore atque in animo habere debemus.

With this sentiment it is that every article of our Constitution joins in chorus. All its most excellent and wise provisions are bottomed on distrust. Never, never, I hope, shall we lose sight of this, the basis of all political wisdom.

It is now time I should conclude this long and wearisome letter.

Means there are, I think, by which the Union may constitutionally proceed to maturity. Let it then be your object to support the Union, but also to respect the Constitution. You are not a Party Man, nor among them, “ *qui certis quibusdam destinatisque sententiis addiēti et consecrati sunt ut etiam quæ non probant cogantur defendere*. You, with that proud dignified feeling and nice sense of honour, at all times so becoming, resolutely dare to think for yourself,

and do not, as too many others do, indiscriminately approve. You think, and surely you think rightly, that a Member of Parliament should square his conduct after the manner of the impartial Historian, who, though he is afraid to maintain what is false, nobly dares to sustain the truth. You can separate the dross from the ore; and, while you retain what is good, know how also to reject what is bad.

If you urge the Union forwards, you cannot too cautiously avoid suffering it to flourish on the Ruins of First Principles. If to unite the two kingdoms be a profitable and wholesome Policy, let its Advocates rest assured that its promised benefits will be found delusive, if they build up their Union upon so sandy a foundation, as that of an irrevocable Act of the *present* Irish Parliament. The wound they give the

Constitution may to their cost prove mortal. It might almost be exclaimed,

“ ——— *Vitasque in vulnere ponunt.*”

I am,

With the greatest

Esteem and respect,

Yours, &c. &c.

H. M.

THE END.

Printed by COOPER and WILSON,
Wild Court, Great Wild Street, Lincoln's Inn Fields, London.

Received of the Honble the Secretary of the
 Treasury the sum of One Hundred and
 Twenty Dollars for the use of the
 Office of the Secretary of the Treasury

in full for the year ending
 the 31st day of December 1781

Witness my hand and seal this 1st day of
 January 1782

John Jay
 Secretary of the Treasury

Attest
 the 1st day of January 1782

John Jay
 Secretary of the Treasury



